XI-HC-22

(40) (39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Division Bench

मामला क्रमांक Cr. Ref-303 सन् 2005

In reference विरुद्ध State of C.G through P.S. Balorda Bazar Raipur

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(42) AFR

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL REVISION NO. 303 OF 2005

Gulab Khan & Others

Vs.

The State of Chhattisgarh

O R D E R

(Dated 20th July, 2005)

(43)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL REVISION NO. 303 OF 2005

Gulab Khan & Others

Vs.

The State of Chhattisgarh

CORAM : HON'BLE SHRI FAKHRUDDIN, J &
HON'BLE SHRI DILIP DESHMUKH, J

Shri Y.C. Sharma, counsel for the accused persons.

Shri J.D. Bajpai, Govt. Advocate/Addl. Public Prosecutor for the State of Chhattisgarh.

Shri Anil Walia, Advocate appears as amicus curaie.

Per Dilip Deshmukh, J

O R D E R
(Dated 20th July, 2005)

Heard.

2. The manner in which two Judicial Officers in the State of Chhattisgarh have rejected the bail furnished by the accused/appellants in compliance of the order passed by this Court on 7-3-2005 in Criminal Appeal No.475/2002 (***Gulab Khan & Others vs. The State of Chhattisgarh***) has shocked our judicial conscience compelling us to consider this matter in exercise of suo motu revisional powers.

3. Brief facts are that in Criminal Appeal No.475/2002 vide order dated 7-3-2005 this Court had granted bail to Gulab Khan, Shabbir @ Shabbu and Minaz Khan and had directed that the execution of substantive sentences imposed on them shall remain suspended on their furnishing personal bonds in sum of

(44)

Rs.20,000/- with two sureties in the likewise amount to the satisfaction of the trial Court concerned for their appearance before the said Court on 9th May, 2005.

4. In pursuance to the order passed by this Court, the appellants furnished surety of one Kandaku, son of Sukalu, resident of Village Bhatpal, Police Station Basur, Tehsil & District Dantewada and of one Sheikh Nuruddin, son of Nainuddin, resident of Geedam, Police Station Geedam, Tehsil & District Dantewada. The surety bonds were accompanied by an affidavit relating to the immovable property possessed by these sureties as well as documentation in the form of *Rinpustika* to substantiate their solvency for standing surety for the appellants.

5. The surety was furnished before Shri M.S. Kerketta, Second Additional Sessions Judge, Baloda Bazar (hereinafter referred to as the A.S.J.-II) on 17-3-2005. The A.S.J.-II rejected the surety furnished by the appellants on the ground that both the sureties belong to a naxal prone area whereas the trial was being held in Baloda Bazar and therefore, if the appellants/accused persons did not remain present or absconded it would be extremely difficult to search not only the accused/appellants but also the sureties. To add insult to injury, the learned Judge further observed that since both the sureties resided in a naxal prone area even the Police force would not be in a position to comply with the orders of the Court and therefore, rejected the surety.

(45)

6. On 2-6-2005 the accused/appellants in compliance of the order dated 7-3-2005 passed by this Court furnished two sureties i.e. Shiv Kumar and Bhuneshwar both residents of Baloda Bazar before the First Additional Sessions Judge, Baloda Bazar (hereinafter referred to as the A.S.J.-I). Their surety bonds were also duly supported with affidavit and documentation relating to immovable property but this time both the sureties furnished by the appellants met with rejection by the A.S.J.-I on 2-6-2005 on the ground that the sureties were not solvent. No reason much less cogent was assigned by the A.S.J.-I for arriving at such a conclusion in the order rejecting the surety.

7. We have heard Shri Sharma, learned counsel appearing for the accused persons and Shri Bajpai, learned Govt. Advocate/Addl. Public Prosecutor appearing on behalf of the State.

8. Section 441 of the Code of Criminal Procedure which lays down the procedure for furnishing of bonds of accused and sureties is quoted below :

> ***'441. Bond of accused and sureties.—***
> *(1) Before any person is released on bail or release on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so as to attend until otherwise directed by the police office or Court, as the case may be.*

(46)

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Courts to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness."

9. It is thus clear from a plain reading of sub-section (4) of Section 441 of the Code of Criminal Procedure that for the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

10. So far as the order dated 17-3-2005 passed by A.S.J.-II is concerned, we find that the prosecution did not raise any such objection that the appellants were likely to abscond in which event the Police force would not be in a position to comply with the orders of the Court or to trace out the accused/appellants or their sureties in a naxal prone area. It was merely a conjecture of the A.S.J.-II who stretched his imagination too far, while being unmindful of the Constitutional mandate that no geographical

(47)

barriers could be created for the sureties to be furnished within India which is one from Kashmir to Kanyakumari.

11. In the case of ***Moti Ram and Others vs. State of Madhya Pradesh*** reported in ***AIR 1978 SC 1594***, the Apex Court has held that it is not within the power of the Court to reject a surety because he or his estate were situated in a different district or State. There was no law prescribing the geographical discrimination implicit in asking for sureties from the court district. Para 32 of the aforesaid decision of Apex Court is relevant and quoted below :

> *"**32.** To add insult to injury, the magistrate has demanded sureties from his own district ! (We assume the allegation in the petition). What is a Malayalees, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha, Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the Court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Art. 14 protects all Indians qua Indians, within the territory of India. Art. 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other*

(48)

minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff."

12. The approach of the A.S.J.II is all the more disheartening because there was no direction given by this Court on 7-3-2005 in Criminal Appeal No.475/2002 that the accused/appellants shall furnish local sureties. The order dated 7-3-2005 was that the accused/appellants shall furnish personal bond in the sum of Rs.20,000/- with two sureties in the like amount to the satisfaction of the trial Court concerned for their appearance before the said Court on 9th May, 2005. It is thus clear that the satisfaction of the trial Court should have been exercised in a reasoned manner and not in an arbitrary manner as the A.S.J.-II had done. The order of rejection of sureties passed by A.S.J.-II on 17-3-2005 tantamounts not only to negation of the right to personal liberty of the appellants but also nullifies the right to any person residing in a naxal prone area to stand surety. It also shows utter disregard for the orders passed by this Court. The manner in which the A.S.J.-II imposed a geographical barrier for the appellants in the matter of furnishing surety tantamounts to negation of the order passed by this Court on 7-3-2005 in Criminal Appeal No.475/2002. It is pertinent to note that the A.S.J.-II had, in the order dated 17-3-2005, not even stated that the sureties did not meet the test of sufficiency under Section 441(4) of the Code of Criminal Procedure. Once the surety furnished by the accused/appellant was supported by an affidavit and photograph of the surety and the

(49)

documentation to substantiate the solvency of the surety it stood the test of sufficiency as laid down in Section 441 sub-section 4 of the Code of Criminal Procedure and the A.S.J.-II had no jurisdiction to create geographical barriers for rejection of such sureties. Order passed by the A.S.J.-II has thus caused a serious miscarriage of justice.

13. We, therefore, consider this to be a fit case for exercising the powers of suo motu revision. The order, prima facie, on the one hand amounts to transgressing judicial limits by the A.S.J.-II and also puts a label of incompetency on the Police in Chhattisgarh State to search the accused persons and the sureties in a naxal prone area. The learned Addl. Public Prosecutor had categorically stated that the Police force in Chhattisgarh is competent in maintaining the law and order in the State. We strongly disapprove of the observations made by the A.S.J.-II since they tend to demoralize the Police force who are posted in naxal prone areas. The sureties had come all the way from Geedam and Dantewada to furnish bail and had furnished their bail bonds, affidavits and valid documentation regarding their immovable property.

14. On 2-6-2005, the accused persons had furnished two sureties as mentioned hereinabove. When these sureties were furnished the A.S.J.-I rejected the same in a most casual and arbitrary manner without assigning any reason. According to Section 441(4) of the Code of Criminal Procedure, it is open to the learned Judge to hold an inquiry itself or cause an inquiry to be

made by a Magistrate subordinate to the Court in case the surety furnished does not appear to be sufficient. In the instant case there is nothing to show that any such inquiry was made. The A.S.J.-I did not even care to indicate as to what was the deficiency for which the sureties have been branded as incompetent or unfit. The approach of the A.S.J.-I smacks of arbitrariness and amounts to negation of the right to personal liberty of the appellants.

15. Having considered the facts and circumstances of the case, material on record and in view of the law laid down by the Apex Court, the orders dated 17-3-2005 and 2-6-2005 passed by the A.S.J.-II and A.S.J.-I respectively are set aside. Office is directed to send back the original papers to the trial Court. Photocopies of the said papers be kept in this record. The trial Court shall, in view of the observations made by us, proceed in this matter strictly in accordance with law.

16. At this stage, learned counsel for the accused/appellants pointed out that the date (9-5-2005) given for the appearance of the accused/appellants vide order dated 7-3-2005 by this Court has lapsed, hence fresh date be given. Accordingly, the date for appearance of the accused/appellants before the trial Court after furnishing bail is now fixed for 28th November, 2005 and on such other dates as may be given to them by the said Court.

17. Before parting, we record our appreciation for the assistance rendered by Shri Anil Walia, Advocate who appeared as amicus curaie in this matter.

Sd/-
Fakhruddin
Judge

Sd-/
Dilip Raosaheb Deshmukh
Judge